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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 DAVID HO, JOHN MAXTON, NATHAN
15 LAY, and SARAH FERNANDEZ on behalf
of themselves and others similarly situated
16 and on behalf of the general public and
DOES 1-20,

17 Plaintiff,

18 v.

19 ERNST & YOUNG LLP,

20 Defendant.
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Case No. C 05-04867-JF (HRL)

[Assigned for all purposes to the Honorable
Jeremy Fogel]

**DEFENDANT ERNST & YOUNG LLP'S
ADMINISTRATIVE MOTION TO SEAL
PURSUANT TO LOCAL RULE 79-5**

[DECLARATION OF GREGORY W. KNOPP
IN SUPPORT OF DEFENDANT ERNST &
YOUNG LLP'S ADMINISTRATIVE
MOTION TO SEAL PURSUANT TO
LOCAL RULE 79-5 FILED
CONCURRENTLY HERewith]

Complaint Filed: September 27, 2005

Dept. 3

Defendant Ernst & Young LLP (“Ernst & Young”) moves this Court for an order to file under seal Exhibit A to the Declaration of Gregory W. Knopp in Support of Ernst & Young’s Motion for Summary Judgment as to Sarah Fernandez (“Knopp Declaration”), Exhibit A to the Declaration of Paul Kotz in Support of Ernst & Young’s Motion for Summary Judgment as to Sarah Fernandez (“Kotz Declaration”), Exhibits A and B to the Declaration of Bin Wolfe in Support of Ernst & Young’s Motion for Summary Judgment as to Sarah Fernandez (“Wolfe Declaration”), and Defendant Ernst & Young’s Memorandum of Points and Authorities in Support of Summary Judgment as to Sarah Fernandez. Exhibit A to the Knopp Declaration, Exhibit A to the Kotz Declaration, and Exhibit A to the Wolfe Declaration consist of excerpts and exhibits from the confidential deposition of Plaintiff Sarah Fernandez (“Fernandez”). Exhibit B to the Wolfe Declaration is an Ernst & Young proprietary document that was designated “confidential” during the course of discovery. Defendant Ernst & Young’s Memorandum of Points and Authorities in Support of Summary Judgment as to Sarah Fernandez quotes, summarizes, and is derived from the aforementioned confidential documents.

On September 13, 2006, this Court amended and signed a Stipulation Governing the Protection of the Parties’ Confidential Information (“Stipulated Protective Order”). (Declaration of Gregory W. Knopp in Support of Motion to Seal (“Knopp Decl.”), ¶ 2, Ex. A.) This Stipulated Protective Order defines “CONFIDENTIAL MATERIAL” as all material “designated as confidential under this Order, the information contained therein, and any summaries, copies, abstracts, or other documents derived in whole or in part from material designated as confidential.” (*Id.*) The Stipulated Protective Order then specifically states that “CONFIDENTIAL MATERIAL shall be lodged separately, in accordance with Loral Rule 79-5.” (*Id.*)

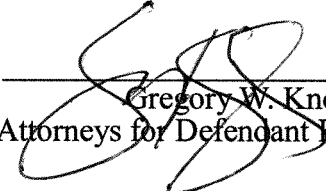
On December 11, 2007, Ernst & Young designated as confidential and produced to Plaintiffs the document now attached as Exhibit B to the Declaration of Bin Wolfe. (Knopp Decl., ¶ 3.) The document was designated as “confidential” because it contains proprietary information regarding Ernst & Young’s competency and proficiency requirements for its staff 1 and staff 2 employees. (*Id.*) Plaintiffs did not object to the confidential designation. (*Id.*) At Fernandez’s deposition on January 16, 2008, the parties agreed on the record to designate the deposition transcript as “Confidential” in its entirety pursuant to the party’s Stipulated Protective Order. (Knopp Decl., ¶ 4.) The “Confidential”

1 designation protects the privacy interests of Fernandez, as well as the proprietary confidential
2 information of Ernst & Young and its clients. Defendant Ernst & Young now files its Memorandum of
3 Points and Authorities in Support of Summary Judgment as to Sarah Fernandez. The memorandum
4 quotes, summarizes, and is largely derived from the aforementioned confidential documents, and
5 therefore also constitutes "CONFIDENTIAL MATERIAL" under the Stipulated Protective Order.
6 (Knopp Decl. ¶ 5.)

7 For the foregoing reasons, Ernst & Young requests that the Court allow it to file Exhibit A to
8 the Knopp Declaration, Exhibit A to the Kotz Declaration, Exhibits A and B to the Wolfe Declaration,
9 and Defendant Ernst & Young's Memorandum of Points and Authorities in Support of Summary
10 Judgment as to Sarah Fernandez under seal in accordance with the Stipulated Protective Order.

11 Dated: March 20, 2008

AKIN GUMP STRAUSS HAUER & FELD LLP

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13 By 
14 Gregory W. Knopp
15 Attorneys for Defendant Ernst & Young LLP
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067. On March 20, 2008, I served the foregoing document(s) described as: **DEFENDANT ERNST & YOUNG LLP'S ADMINISTRATIVE MOTION TO SEAL PURSUANT TO LOCAL RULE 79-5** on the interested party(ies) below, using the following means:

All parties identified for Notice of Electronic Filing generated by the Court's CM/ECF system under the referenced case caption and number

☒ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 20, 2008 at Los Angeles, California.

Tracy Howe

/s/ Tracy Howe

/

[Print Name of Person Executing Proof]

[Signature]